

EXHIBIT 9
WATERWALK PARKING DISTRICT AGREEMENT

THIS WATERWALK PARKING DISTRICT AGREEMENT (the “WaterWalk District Agreement”) is made as of this ____ day of June, 2006 by and between the CITY OF WICHITA, KANSAS, a corporate body politic and political subdivision of the State of Kansas (the “City”), and WaterWalk, LLC (WaterWalk)

Recitals

WHEREAS, the City owns and operates parking facilities located throughout the Central Business District of Wichita, Kansas; and

WHEREAS, the City has entered into Parking District Agreements in other areas of the Central Business District; and

WHEREAS, WaterWalk is a party to the Development Agreement Regarding Development of the East Bank, dated September 10, 2002, as amended, which covers the real property located within the WaterWalk Parking District boundaries more particularly described on Attachment “A” attached hereto (the “WaterWalk Parking District”), and desires to enter into a WaterWalk Parking District Agreement that sets forth the terms and conditions whereby certain payments will be made by WaterWalk to the City of Wichita which are designed to cover a portion of the cost to the City of Wichita of constructing, operating and maintaining parking improvements that are or will be located in the WaterWalk Parking District; and

WHEREAS, WaterWalk cannot provide all of the necessary off-street parking spaces to accommodate and serve the parking needs of WaterWalk Parking District tenants, residents and/or guests as well as the general public;

NOW, THEREFORE, in order to carry out the recitals described above as well as other matters, the parties agree as follows:

Section 1
Parking Fees Rates

A schedule of the monthly parking fee payments to be made by WaterWalk for each required parking space in the Parking District is set out in Attachment “B”, which is attached hereto and incorporated herein by reference. Payments for the total number of parking spaces set forth in Attachment “C” must be made to the City of Wichita in order to satisfy the parking requirements for the use being made of each portion of the WaterWalk Parking District subject to a ground lease.

Payments for parking spaces shall be made by WaterWalk (which WaterWalk may devolve in whole or in part to other tenants and subtenants within the WaterWalk Parking District by lease, Declaration of Covenants, Conditions and Restrictions filed of record against the WaterWalk Parking District, as may be amended, or pursuant to other covenants or agreements, but with the understanding that WaterWalk itself will also remain ultimately responsible to ensure that all such payments are made) in advance and without notice or demand in accordance with the payment schedule and monthly rates set out in Attachment “B” and the provisions hereof. WaterWalk shall make advance payments monthly, quarterly, semiannually or annually at the rates set forth in Attachment “B”. At the end of the schedule set out in Attachment “B”, payments shall be based on monthly rates that will be established based upon the amount actually budgeted for the City’s cost to maintain and repair the WaterWalk Parking District parking improvements; provided, however, that the rates set forth in Attachment “B” shall continue in effect until such time as an accounting by the City shows that the aggregate of revenues received by the City from parking fees generated hereunder and ad valorem tax increment revenues received by the City for the parking structure located within Building C (as depicted in Attachment “A”) are sufficient to fully amortize \$4,000,000 of the City’s contribution to the cost of such parking structure.

Payments shall be made in advance by WaterWalk and shall be calculated by multiplying the number of parking spaces required for a particular completed building, based on its use, as set out in

Attachment “C” hereof, times the appropriate rate for the current year as set out in Attachment “B” hereto. The first payment for parking satisfying the parking requirements of a particular building located upon a portion of the WaterWalk Parking District shall be due and payable on the first calendar day of the month following the date a Certificate of Occupancy is issued for owner or tenant space for such building, and all subsequent payments shall be due and payable on the first calendar day of each month. The first payment shall be a full monthly payment plus a pro rated portion of the monthly payment based on the total number of days from the date of the Certificate of Occupancy to the first day of the following month. Payments not received on or before the due date (postmarks are not acceptable) will be assessed by the City both an administrative fee and daily late fees consistent with statutory limitations until the balance due is paid in full and/or placed as a lien against the property as hereinafter described.

Any change in use of a building within the WaterWalk Parking District which either increases or decreases the number of off-street parking spaces required or the number of off-street parking spaces provided, and which, as a consequence, either increases or decreases the payment to be made hereunder, shall be reported to the City Manager, in writing, and an adjustment will be made starting with the next payment due after the City’s receipt of such written notice. Provided, however, that the City Manager may, upon determining that any such change in use has occurred which increases the payment to be made hereunder, give written notice to WaterWalk of such increase and such increased payment shall be effective with the next payment due together with all retroactive increases identified in such written notice.

The cessation of any use of the building(s) within the WaterWalk Parking District for a period of less than one (1) month shall not be a change in use for which an adjustment decreasing the payment is to be made. WaterWalk agrees to provide written notification to the City of any business and/or use change within five (5) calendar days from WaterWalk’s receipt of notice of each such occurrence. WaterWalk’s obligations hereunder shall terminate as of the date such tenant or subtenant permanently surrenders possession of interest in the property within the WaterWalk Parking District.

So long as the payments to be made hereunder are made when due, and all other provisions of this Agreement are complied with, and except as set forth in the Development Agreement Regarding the

Development of the East Bank, as amended, WaterWalk and other tenants and subtenants within the WaterWalk Parking District shall have a non-exclusive right, as members of the general public, to utilize parking lots and/or other parking facilities constructed by the City of Wichita for the WaterWalk District and to count the total number of parking spaces set out in Attachment “B” hereof towards the requirements to provide off-street parking that may be required under the WaterWalk P.U.D.

WaterWalk agrees to not challenge or oppose the creation of a municipal improvement district or a business improvement district, pursuant to the statutes of the State of Kansas, covering all or any portion of the WaterWalk Parking District.

Section 2

Variance

WaterWalk hereby agrees not to request any variance of the provisions of the off-street parking requirements of the zoning code of the City of Wichita (Section 28.04.141 of the Code of the City of Wichita, Kansas) or the WaterWalk P.U.D. as it now reads. Any such request for variance shall be a breach of this agreement. Provided, however, that nothing contained herein shall limit the ability of WaterWalk to question or challenge the calculation of the off-street parking requirements under said Section 28.04.141 or said P. U. D. with respect to the categorization of the use being made of the subject property; the size or occupancy of such use; or any other element that goes into the formula for determining the off-street parking requirement for such use.

Section 3

Remedy

In addition to and as a complete alternative to all other remedies that the City of Wichita may be entitled to under the law, WaterWalk agrees that all sums to be paid hereunder, when delinquent, may be certified by the Clerk of the City of Wichita to the County Clerk of Sedgwick County, Kansas, to be placed on the tax roll for collection, subject to the same penalties and to be collected in like manner as other taxes, and such sums shall, thereafter, constitute a lien upon the above described

property of WaterWalk. In addition, the City of Wichita may rescind certificates of occupancy once such parking payments are more than six (6) months delinquent.

Section 4

City Approval

Whenever this Agreement calls for approval by the City, such approval shall be given by the City Manager of the City, or his or her designee, unless otherwise specified. The City Manager may, at his or her sole discretion, choose to refer any approval required by this Agreement to the City Council for approval.

Section 5

Binding Effect

This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

Section 6

Governing Law

This Agreement and the legal relations between the Parties shall be governed by, construed and interpreted under the laws of the State of Kansas, and exclusive venue for all disputes and litigation shall be in Wichita, Kansas only.

Section 7

No Waiver

No failure of a Party to exercise any power given such Party hereunder or to insist upon strict compliance of another Party with its obligations hereunder, and no custom or practice of the Parties at variance with the terms hereof, shall constitute a waiver of either Party's right to demand exact compliance with the terms hereof.

Section 8

Headings

The headings of the sections and subsections of this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

Section 9

Covenant

This agreement shall be a covenant running with the real estate located within the WaterWalk Parking District and this instrument may be filed of record with the Register of Deeds of Sedgwick County, Kansas.

Section 10

Obligations

Nothing contained herein shall be interpreted to obligate the City of Wichita to construct any particular parking improvements; nor shall anything herein be construed to confer on WaterWalk any right of action to compel the City of Wichita to construct any specific manner or size of parking improvements in or around the WaterWalk Parking District. Nor shall WaterWalk be obligated to make any payments set forth herein unless the improvements are actually constructed by the City (or, in the case of parking within Building C, by WaterWalk, using funds contributed by the City).

Section 11

Operation of Parking

The City is responsible for operating, maintaining and repairing the parking facilities located south of Dewey and WaterWalk is responsible for operating, maintaining and repairing parking facilities located within buildings constructed on land subject to a ground lease.

Section 11
Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single document.

Section 12
Assignability

This Agreement may be assigned by WaterWalk in connection with any sale, transfer, pledge, or assignment of WaterWalk's rights without the consent or prior approval of the City, but no such assignment shall relieve WaterWalk of any obligations under this Agreement. WaterWalk shall give notice of such transfer to the City in a reasonable amount of time following completion thereof.

IN WITNESS WHEREOF, the parties have set our hands the day and year first above written.

CITY OF WICHITA

By: _____

Carlos Mayans, Mayor

WATERWALK, LLC

By: _____

Jack P. DeBoer, Manager

ACKNOWLEDGMENTS

STATE OF KANSAS)
) SS.
COUNTY OF SEDGWICK)

BE IT REMEMBERED, that on this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for said county and state, came _____, the _____ of the City of Wichita, who is personally known to me to be the same person who executed the within instrument of writing, and duly acknowledged the execution of the same on behalf of the City of Wichita.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

Notary Public

My Commission Expires:

STATE OF KANSAS)
) SS.
COUNTY OF SEDGWICK)

BE IT REMEMBERED, that on this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for said county and state, came _____, the _____ of WaterWalk, LLC, who is personally known to me to be the same person who executed the within instrument of writing, and duly acknowledged the execution of the same on behalf of WaterWalk, LLC.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

Notary Public

My Commission Expires:

ATTACHMENT “A,” PAGE 1

WaterWalk Parking District Legal Description

[insert yet]

ATTACHMENT “A,” PAGE 2

Depiction of WaterWalk Parking District

[see attached]

ATTACHMENT “B”
WATERWALK PARKING DISTRICT

18 YEAR
Parking Assessment Rates

Year Starting <u>January 1</u>	Monthly Rate <u>Per Space</u>
2006	\$ 10.00
2007	\$ 10.00
2008	\$ 10.00
2009	\$ 10.00
2010-2024	\$ 10.00

OTHER CURRENT RATES AND FEES:

Administrative Fee	\$50.00 per failure to pay by due date
Late Fees:	\$5.00 per day

ATTACHMENT “C”
Parking Space Requirements

Owner/Tenant:

Property Description/Use:

Number of Spaces Required:

Square Footage of Leased Premises and/or No. of Seats: _____

Required Spaces per Sq. Ft. or Seat: _____

Total Spaces Required: _____

Parking Space Requirements

Retail: 5 spaces per 1,000 square feet of occupied space

Office: 4 spaces per 1,000 square feet of occupied space

Residential: 1.5 spaces per residential unit

Restaurant: 1 space for each 3 seats*

Bar: 1 space for each 4 seats*

* Outdoor space occupied by restaurants and bars shall be counted at one-half its square footage to account for the seasonal use of such space.